

THE LEGISLATIVE BUDGET PROCESS: MANAGING CHANGE

A Report Prepared for the
Legislative Finance Committee
Subcommittee on Budget and Appropriations

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BACKGROUND AND PURPOSE

The Budget and Appropriations Subcommittee has the assigned task of examining ways to ensure the efficiency and integrity of the legislative budget process. This study was prompted by recent legislative actions that abruptly changed the legislative process in a non-consensus (non-negotiated) manner. The subcommittee received a staff report in December (“State of Montana Budget Process: Managing Change”, by Clayton Schenck, December 7, 2007) that provided the background and framework for this study, as well as a summary of intended and unintended consequences of recent legislative actions. The subcommittee also received a committee action outline (“Institutional Budget Process – Managing Change”) at the March 6 meeting, summarizing concerns addressed by the subcommittee in December, staff responses, and proposed options for subcommittee action.

The purpose of this report, at the request of the subcommittee, is to further explore the legislative budget process, overarching considerations and realities to consider when contemplating change to the process, and the interdependence of the process from a staff perspective. This report is intended to provide the subcommittee further considerations relevant to a committee decision on how to best protect and ensure the integrity of the legislative budget process.

EXISTING LEGISLATIVE BUDGET PROCESS

As stated in previous reports, the existing legislative budget process is a complex process built on Constitutional, Statutory, legislative rules, and on historic tradition and expectations that are not supported by any law. This report will make the assertion that substantive changes to the process need to take into consideration the entire foundation of the legislative budget process to ensure avoidance of unintended and negative consequences

The Constitution requires the Governor to submit a budget to the legislature, and requires public input. Statute sets forth procedures and executive submission requirements, and committee and staff obligations in the budget process. Legislative rules include agreements by the legislature as a body to conduct the budget process within a certain framework.

“Institutional” process, those not supported by law or rule, are those built into the budget process, including the allowance of a joint subcommittee process, a system for capturing and developing the budget bill(s) and amendments, and traditional practices. These processes are the most at risk of non-negotiated change that could have unintended consequences, which are at the heart of the subcommittee analysis.

LEGISLATIVE BUDGET PROCESS CONSIDERATIONS

The realm of processes to pass a state operating budget includes all those steps and other actions necessary for the legislature to pass a balanced budget in a 90 day period that reflects the priorities of the legislature and has legitimacy in the eyes of stakeholders. It is important to note that the operating budget of state government is the only bill(s) that the legislature must pass in a session – it is not an option to fail to pass a state operating budget. Therefore, the process used by the legislature must ensure it supports ultimate passage of the bill(s).

There are over-arching considerations and realities that must be considered when contemplating change to the legislative budget process:

- It must be done in an orderly process to allow completion in 90 days and assurance that the budget is balanced
- It has to be viewed as successfully reflecting the priorities of the legislature and as having legitimacy to stakeholders, which means in part the integrity of the process
- Any change must be considered in the context of other rules and established procedures and their inter-dependence on the ultimate passage of a budget bill

ORDERLY PROCESS

The purpose of rules, including those supported by law and tradition, is to ensure an orderly budget process. There are both technical and procedural (legislative) processes to consider.

Technical considerations

The legislature relies on certain technical systems and processes to complete the obligation to pass a budget. There are inherent limitations to these systems that must be considered when contemplating change.

- Can existing systems and processes handle the proposed process changes?
- Does the change impair the ability of the existing systems to ensure an appropriate level of risk management?
- Does the change allow the legislature to ensure a balanced budget and reflection of legislative priorities?
- Does the change consider the impact on staff and other legislative resources and the ability to respond to a change in the process?

Procedural considerations

As stated previously, the existing layer of laws, rules and procedures have an interdependence on the outcome of the budget process that must be considered when contemplating substantive change.

- Does the change allow the legislature to complete the budget process within the required 90 days? The general appropriations act is extremely time sensitive, requiring virtually the full 90 days to be completed. The rules assume certain procedures in order to complete it in a timely manner. As an example, the allowance of delaying transmission of the bill to the Senate until the 67th day assumes that joint subcommittees will be used for the initial hearings, public input, and recommendations.
- Does the change facilitate the ability to ensure balancing of the budget through coordination of bills?

REFLECTING PRIORITIES AND PROCESS INTEGRITY

The process must be designed to reflect legislative priorities and have the confidence of the public in the integrity of the process. Considerations include:

- Reflecting outcomes that can ultimately be supported by a majority of each house (legislative deliberation)
- Transparency of the process through public hearings and input
- Accountability of budget decisions
- Ability of the public to participate in a meaningful way (Constitutional issue)
- Applicability of current statutory directives and legislative directives
 - Will each house have sufficient time if transmittal dates or other procedures aren't changed to fit the procedural change?
 - The constitution calls for the Governor to submit the budget proposal that is to be considered by the legislature. Statute requires the budget considered and approved by the legislature to be based on the budget submitted by the executive.
 - Statute requires the executive to submit the budget with specific data, in certain formats, and be established with a statutorily defined base
 - Statute requires legislative staff to analyze the Governor's budget, to utilize the same base as the executive, and to report its analysis to the Legislature

RECENT SUBSTANTIVE CHANGES TO THE LEGISLATIVE BUDGET PROCESS

This section examines the impact of recent unanticipated budget changes and their consequences related to the considerations discussed above that must be taken into account when implementing change:

MULTIPLE BILLS INTRODUCED BY INDIVIDUAL LEGISLATORS – 2007 SESSION

- Replaced executive budget
 - Challenged the Constitutional responsibility of the Governor to submit the budget proposal to be considered by the legislature
 - Challenged statutory language requiring the budget considered and adopted by the legislature be based on the executive budget recommendation
- Doesn't adhere to the legislative directive in statute for executive submission of the budget according to required content, format, and base – by abandoning the executive budget, this statute and its intent is of questionable relevance
- Doesn't adhere to the legislative directive in statute for legislative staff to analyze the executive budget and base its independent analysis on the executive budget submission – legislative staff analysis is of questionable value when the executive budget is not the basis for the budget bill(s)
- Imperils public confidence in the legislative budget process, as reflected in public and press response to the conflict over multiple bills
- Arguably impacted the ability of the legislature to complete the budget process in the regular session due to the acrimony attributed to the lack of consensus for the sudden change to an established process
- Ultimately, the change was unsuccessful, reflected in ultimate passage in special session of a single appropriations bill

CHANGE TO THE STATUTORILY REQUIRED BUDGET BASE – 2003 SESSION

- Challenged the Constitutional responsibility of the Governor to submit the budget proposal to be considered by the legislature
- Challenged statutory language requiring the budget considered and adopted by the legislature be based on the executive budget recommendation
- Didn't adhere to the legislative directive in statute for executive submission of the budget according to required content, format, and base – the base adopted by the House Appropriations Committee was in complete conflict with the executive statutory requirement
- Ignored legislative directive in statute for legislative staff to analyze the executive budget and base its independent analysis on the executive budget submission – legislative staff analysis was statutorily required to be done using a statutorily defined base that wasn't used by the legislature when it adopted a prior biennium base that was significantly flawed in its relevance for the budget being considered
- Imperiled public confidence in the legislative budget process, as reflected in public and press response to the conflict and confusion over the use of a base different from the statutory requirement for executive and legislative budget submission and analysis – there was no effective way to reconcile differences
- Ultimately, the change was unsuccessful, as reflected in ultimate passage of a budget that, after significant confusion and frustration, substantively was amended back to the original executive base submission

INJECTION OF NOTION TO ELIMINATE JOINT SUBCOMMITTEE PROCESS – PAST AND FUTURE

In the 2007 session, the joint appropriations budget process was abruptly ended midway through the joint subcommittee process. In this interim, there have been overtures by legislators to consider abandoning the joint subcommittee process in the future, if necessary to gain the political upper hand (i.e., to break an unfavorable tie in the joint subcommittees)

- Challenges a sense of fair play and consistency relative to past sessions
- Imperils the ability of the legislature to complete its constitutional duty in an efficient manner
- Imperils public confidence in the process, reflected in abandonment of several weeks of public testimony and the resulting comments of the public and the press (2007 session)
- Ignores the basic structure of the existing process and the interdependency of laws, rules, and traditional processes
 - Rules assume joint subcommittees to efficiently complete the process
 - Without subcommittees, should change other rules to accommodate the change
 - For example, change the allowance to delay until the 67th day for transmittal to the Senate

SUMMARY

The legislature traditionally holds itself to high standards for ensuring the fairness and integrity of the legislative process, including the mandatory passage of the state operating budget. There has consistently been a sense of fairness, even if one party could have gained advantage by an arbitrary change in the traditional and expected process. This has been reflected in 30 years of a consistently applied budget process prior to the 2003 session and beyond. The unannounced substantive process changes in recent years have been accompanied by contentious reaction to unilateral changes in the process that had widespread perception as unfair and contributing to confusion and loss of public confidence.

SUBCOMMITTEE OPTIONS

The material presented above provides additional issues to be taken into consideration when contemplating ways to facilitate improved management of change in legislative institutional processes. Considerations include statutory or legislative rule changes. Other options are some level of buy-in to processes not supported by law or rule. However, these assume some level of adherence to a code of established fairness and equity in order to be effectively implemented. This may require some form of rule, memo of understanding, rule of engagement, or stated commitment of compliance.

Subcommittee recommendations should also take into consideration the appropriate role and options of staff when changes are made that place increased technical or procedural risks on the legislature and staff. For example, if the change would require staff to abandon quality assurance procedures that the legislature depends upon and/or a substantial increase in staff or other resources to accomplish an unplanned change, what options are available for staff to address these issues and obtain bi-partisan legislative guidance? Who should appropriately be allowed to make the decision to accept a higher level of risk or resources? The method in which changes have been implemented in the past (with no staff pre-notification, analysis, or counsel) have left staff in difficult and arguably inappropriate political situations.